against each other, it may be, originally grew out of a supposed necessity of the protection of the wife against personal violence, threatened or actual, by the husband. Whatever may have been the origin of the exception, it is now recognized as extending to all cases in which the element of personal violence to the wife is a necessary constituent of the offense. *State* v. *Dyer*, 59 Me. 303. The case cited was an indictment against the husband and another for using an instrument with intent to procure the miscarriage of the wife while pregnant, and is not, in reason or principle, distinguishable from the present case. Wherever the element of personal violence is a necessary constituent of the offense, every reason exists upon which the exception rested originally, and for the sake of public justice the wife should be admitted as a witness. And in all cases in which she is admissible against, she is admissible for, the husband. Whart. Cr. Ev., sec. 394 a; *Com.* v. *Murphy*, 4 Allen. 491; *State* v. *Neill*, 6 Ala. 685; *Tucker* v. *State*, 71 Ala. 342. The court below erred in the exclusion of the wife as a witness."

Deeds to Take Effect at Death of Grantor.—In *Pinkham* v. *Pinkham* (Neb.), 76 N. W. 410, it is held that a deed purporting to convey lands, but containing a provision that it is not to take effect until the grantor's death, is testamentary in its character, and is a will rather than a deed. Before marriage, the grantor conveyed certain lands to his grandson, by deed with warranty of title. The deed was delivered and recorded. It contained the provision that "this deed is to take effect and be in full force from and after my death." The grantor subsequently married. Upon his death his widow claimed dower in the lands mentioned in the deed, and his heirs the fee-simple.

It was held that the widow was entitled to dower, and that the remainder passed, not to the grantee, but to the grantor's heirs at law—the latter, presumably, on the ground that the marriage revoked the testamentary paper, or that it was not executed with the necessary formality to operate as a will. We say 'presumably,' since the court does not assign reasons for its ruling on this point.

"We are satisfied," says the court, "that the instrument was not effective as a deed. It did not purport to be effective as a conveyance until the death of Calvin Pinkham, so that the absolute legal title to the premises were in him at the time of his death. A deed must pass a present interest in the property, even though the right of possession and enjoyment may not accrue until some future period. A will passes no title until after the testator's death, and this marks the essential difference between a deed and a will. The great weight of authority sustains the proposition that an instrument, in the form of a deed, which takes effect and becomes operative alone upon the death of the maker, is testamentary in character, and is not a deed. Devl. Deeds, sec. 309; *Habergham* v. *Vincent*, 2 Ves. Jr. 204; *Bigley* v. *Souvey*, 45 Mich. 370, 8 N. W. 98; *Singleton* v. *Bremar*, 4 McCord, 12; *Conrad* v. *Bell* (Minn.) 61 N. W. 673; *Blackman* v. *Preston* (Ill. Sup.) 15 N. E. 42; *Donald* v. *Nesbitt* (Ga.) 15 S. E. 367; *White* v. *Hopkins* (Ga.) 4 S. E. 863; *Sperber* v. *Balster*, 66 Ga. 317; *Hazleton* v. *Reed* (Kan. Sup.) 26 Pac. 450; *Nichols* v. *Emery* (Cal.) 41 Pac 1089; *Hannig* v. *Hannig* (Tex. Civ. App.) 24 S. W. 695; *Leaver* v. *Gauss*, 62 Iowa, 314, 17 N. W. 522; *Turner* v. *Scott*, 51 Pa. St. 126.

"In the last case a father executed a warranty deed to his son, reserving the

lands described to the grantor for his life, and containing a provision that 'this conveyance in no way to take effect until after the decease of the grantor.' The court held this clause rendered the instrument testamentary in character. Woodward, C. J., in delivering the opinion of the court, observed: 'As these words were expressly limited to take effect only after the death of the grantor, they were necessarily revocable words. The doctrine of the cases is that whatever the form of the instrument, if it vest no present interest, but only appoints what is to be done after the death of the maker, it is a testamentary instrument. It signifies nothing that the parties meant to make a deed instead of a will. If they had used language which the law holds to be testamentary, their intention is to be gathered from the legal import of the words they have employed, for all parties must be judged by the legal meaning of their words.'

"In *Singleton* v. *Bremar*, 4 McCord, 12, it was held that a deed to take effect at the death of the grantor is void. The same principle was recognized and applied in *Blackman* v. *Preston* (Ill. Sup.) 15 N. E. 42.

"In *Donald* v. *Nesbitt* (Ga.) 15 S. E. 367, it was held that a deed containing a clause that 'in no event is this deed to go into effect until after my death' was testamentary in its character, and not a deed of conveyance, operating *in præsenti*.

"In *White* v. *Hopkins* (Ga.) 4 S. E. 863, the court said: 'The true test to determine whether the instrument is a deed or a will is whether it is to take effect immediately or to take effect only after the death of the maker. If it is to take effect only after the death of the maker, it is a will; if it is to take effect immediately, or if it conveys a present estate, it is a deed.'

"In *Sperber* v. *Balster*, 66 Ga. 317, an instrument in the general form of a deed was construed, which contained this provision: 'Said deed of gift to be of full effect at my death, together with all the live stock . . . . that may be found on said premises, together with all said premises.' Jackson, C. J., speaking for the court, observed: 'These words show the intention of the maker to convey what would be on the premises at his death, and to have his gift of the land to go into effect at the same time. . . . . The true meaning of the maker here, whether to part with the title at once or on his death, must be gathered from the entire paper. The title to other items of property in the very same sentence, passing to the same person, may well be invoked to show how and when the title to the land was intended to pass. . . . . The very fact the deed of gift is to have full effect, in express words, at the death, is potent to show the meaning of the donor. No life interest, no possession for life, is anywhere reserved. Such a thing is not hinted at.'

"In *Hazleton* v. *Reed*, 46 Kan. 73, 26 Pac. 450, the supreme court of Kansas states the doctrine in this way: 'It may be laid down as a general rule that a written instrument, which discloses the intention of the maker respecting the posthumous disposition of his property, and which is not to operate until after his death, is testamentary in its character, and not a deed or contract, and may be revoked.' Although the instrument before us was in form a deed, it was nevertheless testamentary in character, and inoperative as a conveyance of the land. The instrument, in express terms, was made to take effect on the death of the maker, and no present estate in the property passed to John H. Pinkham. Calvin Pinkham, Sr., was the owner of the land at the time of his death, and his widow was

entitled to dower therein, and, subject thereto, the estate passed to the heirs of the deceased."

The difference between a conveyance not to take effect until the death of the grantor, and one taking effect at once, but with a reservation of a life estate to the grantor, is obvious. The latter is illustrated by the case of *Claiborne* v. *Radford*, 91 Va. 527. A full collection of the authorities may be found in the editor's note to *Burlington University* v. *Barrett* (Iowa), 92 Am. Dec. 376, 386–389; and note to *Carlton* v. *Cameron* (Texas), 38 Am. Rep. 621.

PROOF that a person arrested had upon her person and about her premises articles the possession of which tended to establish guilt, although they were discovered by forcibly entering the house and searching her person and premises, without any warrant or authority of law, is held admissible, in *Williams* v. *State* (Ga.), 39 L. R. A. 269, although the search and seizure may have been unlawful, unwarranted, unreasonable, and reprehensible.